

**United States District Court  
District of Nevada**

Jeromy Oelker  
525 E. Bonanza Rd.  
Las Vegas, NV 89101

## **\*IRREPARABLE INJURY\***

<b>Jeromy Oelker</b>	)	
<i>Plaintiff (pro se)</i>	)	
	)	
vs.	)	
	)	
<b>Magistrate Victoria Olds;</b>	)	<b><u>No. 2:23-cv-01490</u></b>
<b>Magistrate Paige Nolta;</b>	)	Memorandum in Support/
<b>Prosecutor Zach Pall;</b>	)	Motion to Vacate Judgment
<b>Attorney Thomas Clark;</b>	)	F.R.C.P. 60(b)(4), (b)(3);
<b>Attorney Brennan Wright;</b>	)	28 U.S.C. § 2283;
<b>Deputy Arnzen;</b>	)	28 U.S.C. § 1657
<b>Sheriff Davis</b>	)	
<b><i>Defendants</i></b>	)	ref: CR31-20-0097

This Conclusion of Law Abridges the 11<sup>th</sup> Amendment

**This pre-trial record is recorded fact.** In Tumey, the Murchison Court noted that “fairness... requires an absence of actual bias in the trial of cases,” and common law had “always endeavored to prevent even the probability of unfairness.” Here, for due process, “to perform its high function in the best way, ‘justice must satisfy the appearance of justice.’” Offut v. United States, 348 U.S. 11, 14 (1954)).

1 Idaho Code of Judicial Conduct 1.1:

2 **A judge shall comply with the law,\*** including the Code of Judicial  
3 Conduct.

4  
5 Idaho Code of Judicial Conduct: Terminology:

6 **“Impropriety”** includes conduct that violates the law, or provisions of this  
7 Code, and conduct that undermines a judge's independence, integrity, or  
8 impartiality.

9  
10 “The probability of actual bias on the part of the judge or decision maker is  
11 too high to be constitutionally tolerable.” **“If the failure to recuse is so**  
12 **severe that it deprives a litigant of due process, then the judgment is**  
13 **‘VOID.’”** Caperton, 556 U.S. at 872, 877.

14  
15 **“Denying defendants relief for clear violations of their procedural**  
16 **rights reduces the law to pretend-rules.”** United States v. Mechanik, 475  
17 U.S. 66 (1986); citing United States v. Borello, 766 F.2d 46, 58 (CA2  
18 1985); quoting United States v. Antonelli Fireworks Co., 155 F.2d 631,  
19 661 (CA2) (Frank, J., dissenting). Adjudications require both the  
20 prosecuting party and the prosecuted party to follow some defined  
21 procedural process that serves to help check prosecutorial intimidation or  
22 overreach.

23  
24 “Officials and Judges are deemed to know the law and sworn to uphold the  
25 law; **Officials and Judges cannot claim to act in good faith in willful**  
26 **deprivation of law**, they certainly cannot plead ignorance of the law, even  
27 the Citizen cannot plead ignorance of the law, the courts have ruled there is  
28 no such thing as ignorance of the law.” Cooper v. Aaron, 358 U.S. 1, 78  
S.Ct. 1401 (1958).

1 Where jurisdiction is statutory and the Legislature requires the Court to  
2 exercise its jurisdiction in a certain manner, to follow a certain procedure,  
3 or otherwise subjects the Court to certain limitations, an act of the Court  
4 beyond these limits is in excess of its jurisdiction. In re: T.R.P., 360 N.C.  
5 588, 636 S.E.2d 787 (2006). Jurisdiction only advances by procedural  
6 adherence.

7  
8 Under Rochin, 342 U.S. at 172. 268. Id. at 173. The Court also noted that,  
9 “due process of law, as a historic and generative principle, precludes  
10 defining, and thereby confining, these standards of conduct more precisely  
11 than to say that convictions cannot be brought about by methods that  
12 offend ‘a sense of justice.’” Id. (quoting Chief Justice Hughes “speaking for  
13 a unanimous Court” in Brown v. Mississippi, 274 U.S. 278, 285-86  
14 (1936)).

15  
16 State v. Rogan, 984 P.2d 1231 (1999) (citing to Dinitz while holding that  
17 “where the defendant is provoked by Judicial or Prosecutorial  
18 Overreaching into requesting a mistrial and his motion is granted, **he may**  
19 **not be retried for the same offense**”); United States v. Dinitz, 424 U.S.  
20 600, 607 (1976).

21  
22 **Idaho Criminal Rule 48.** Dismissal by the Court: (2)(c) Effect of  
23 Dismissal. An order for dismissal is a bar to any other prosecution for the  
24 same offense if it is a misdemeanor.

25  
26 Because corrupt intent knows no stylistic boundaries, “**Fraud on the**  
27 **Court**” can take many forms. Auode v. Mobil Oil Corp., 892 F.2d 1115,  
28 1118 (1st Cir. 1989).

1 In Bulloch v. United States, 763 F.2d 1115, 1121 (10th Cir. 1985), the  
2 court stated “Fraud upon the court is fraud which is directed to the judicial  
3 machinery itself It is where the court or a member is corrupted or  
4 influenced or influence is attempted or **where the judge has not**  
5 **performed his judicial function** --- thus where the impartial functions of  
6 the court have been directly corrupted.”

7

8 A “**fraud on the court**” occurs where it can be demonstrated, clearly and  
9 convincingly, that a party has **sentiently** set in motion some  
10 unconscionable scheme calculated to interfere with the judicial system's  
11 ability impartially to adjudicate a matter by improperly influencing the trier  
12 or unfairly **hampering the presentation of the opposing party's claim or**  
13 **defense**. Auode v. Mobil Oil Corp. 892 F.2d 1115 (1st Cir. 1989).

14

15 As a general rule, double jeopardy rarely applies to situations involving a  
16 mistrial in a criminal case. This is doubly so when the defendant moves for  
17 a mistrial. However, the U.S. Supreme Court declared in Oregon v.  
18 Kennedy, that when a prosecutor “**goads**” the defendant into moving for a  
19 mistrial, double jeopardy may apply if the prosecutor acted with the intent  
20 to cause a mistrial. Courts use the term “goading” to explain prosecutorial  
21 overreaching that effectively requires the defense to move for a mistrial.  
22 It's a difficult standard to meet. (Oregon v. Kennedy, 456 U.S. 667 (1982)).

23

24 **Obstruction of justice** occurrence when two or more persons conspire to  
25 **imped, hinder, obstruct, and defeat the due course of justice.** U.S. Code  
26 Title 42 Sections: 1985(2) Conspiracy To Interfere With Civil Rights”....(2)  
27 Obstructing Justice;...or if two or more persons conspire for **the purpose of**  
28 **impeding, hindering, obstructing and defeating, in any**

1 manner, the due course of justice in any State or Territory, with intent to  
2 deny to any citizen the equal protection of law. The rights of access to the  
3 courts is not limited to protecting rights of access to justice of only those  
4 individuals who will ultimately prevail in judicial process but it reaches  
5 conspiracy, misconduct and unjustified acts and actions which impedes the  
6 due course of justice with the intent to deny the individual equal  
7 protection of the law. See Bell v. City of Milwaukee 746 F.2d 1205 (7th  
8 Cir. 1984); Also See McTigue, 60 F.3d 381, 382.

9  
10 Aside from the fact the Lewis County Court never acquires Personnel  
11 Jurisdiction and Plenary Power they violate all of Idaho's Statutory  
12 Procedural Requirements regarding a Criminal Prosecution. Hence they  
13 never acquire Subject Matter Jurisdiction either. To include altering the  
14 Hearing Transcripts, Body Camera Video, and Ante Dating the Record.

15  
16 It is with preponderance Case # CR31-20-0097 of the Lewis County  
17 Magistrate Court of Nez Perce, ID. is "VOID" as wanting in due process of  
18 law within the meaning of the Fourteenth Amendment.

19  
20 Rule 60(b) is the basis upon which this dispute is resolved, the underlying  
21 ethical framework is important to our system of justice and in promoting  
22 public confidence in the integrity of our judicial system. The Lewis County  
23 Magistrates are the entity ultimately responsible for promulgating the rules  
24 and practices governing both bench and bar in Idaho. The Code of Judicial  
25 Conduct ("Judicial Code") promulgates fulfillment of that duty. The  
26 Judicial Code provides that a "judge should uphold the integrity,  
27 independence and impartiality of the judiciary" and to that end "**should**  
28 **avoid impropriety and the appearance of impropriety** in all activities."

1 It is with preponderance Case # CR31-20-0097 is subject to F.R.C.P.  
2 60(b)(4) and F.R.C.P. 60(b)(3):  
3

4 **1) Personnel Jurisdiction (Not Acquired)**

- 5 a) Probable Cause Affidavit Defective (Ante Dating/ Fraud)
- 6 b) Probable Cause Hearing never held (**Exhibit X-5**)
- 7 c) Criminal Information never filed (**Exhibit X-5**)

8 **2) No Plenary Power without signed “Information” (**Exhibit X-5**)**

9 **3) Judicial Impropriety/ Bias (Hearing Transcript)**

10 **4) Right to be Heard denied**

- 11 a) Judicial Bias (Hearing Transcript)
- 12 b) Ineffective Assistance of Counsel (Wrong Dismissal Filed)
- 13 c) Bail Hearing defective/ No Information
- 14 d) No response to Dismissal Motions or Supplemental Discovery
- 15 e) Chilled Speech (Hearing Transcript)

16 **5) Violation of ALL “Fundamental” Due Process rights**

- 17 a) Double Jeopardy violated without “Information”

18 **6) Subject Matter Jurisdiction lost (No Procedural Due Process)**

19 **7) Fraud on the Court**

- 20 a) Unreasonable Delay/ Malicious Prosecution
- 21 b) Transcript Redaction without Memorandum
- 22 c) Judicial Impropriety/ Ante Dating the Record
- 23 d) Clerk Impropriety (No Stamp/ Seal; I.C.R. 49(d))

24 **8) Process Crimes/ Abuse of Process**

- 25 a) Obstruction of Justice
- 26 b) Spoliation of Evidence/ Tampering
- 27 c) No Compulsory Process
- 28 d) **Speedy Trial Right Violated**

1 The case law regarding Federal Rule of Civil Procedure 60(b) clearly states  
2 that a federal court has no discretion to deny a motion for relief from a  
3 judgment unsupported by either personal or subject matter jurisdiction.  
4 Carter v. Fenner, 136 F.3d 1000, 1005 (5th Cir. 1998), cert. denied, 525  
5 U.S. 1041 (1998); Chambers v. Armontrout, 16 F.3d 257, 260 (8th Cir.  
6 1994); Jordon v. Gilligan, 500 F.2d 701, 704 (6th Cir. 1974), cert. denied,  
7 421 U.S. 991 (1974) (“A void judgment is a legal nullity and a court  
8 considering a motion to vacate has no discretion in determining whether it  
9 should be set aside.”)

10  
11 **No Probable Cause hearing:** (Order Never Received) (Ante Dating)

12 The Court determined that such a detention could easily result in an illegal  
13 seizure and that the Fourth Amendment requires a judicial determination of  
14 probable cause as a prerequisite to extended restraint of liberty following  
15 arrest. Gerstein v. Pugh, 420 U.S. 103, 125 (1975). Id. at 114.

16  
17 In Johnson v. U.S., 333 U.S. 10. 13-14 (1948), this Court stated, “the point  
18 of the Fourth Amendment is not that it denies law enforcement the support  
19 of the usual inferences which reasonable men draw from evidence. Its  
20 protection consists in requiring that those inferences be drawn by a neutral  
21 and detached magistrate instead of being judged by the officers engaged in  
22 the often-competitive enterprise of ferreting out crime.”

23  
24 **No Criminal Information:** (excess of jurisdiction) (**Exhibit X-5**)

25 19-102. PROSECUTION BY INDICTMENT OR INFORMATION —  
26 EXCEPTIONS. Every public offense must be prosecuted by indictment, or  
27 information. Without any Information, there lies no Elements.

Under United States v. Du Bo, 186 F.3d 1177 (9th Cir. 1999), **an indictment missing an essential element challenged before trial must be dismissed regardless of whether the omission prejudiced the defendant.** The complete failure to charge an essential element of a crime, however, “is by no means a mere technicality.” See United States v. King, 587 F.2d 956, 963 (9th Cir. 1978). As the Supreme Court stated over a century ago, the omission of a necessary element of an offense is a “matter of substance, and not a defect or imperfection in matter of form only.” Carll, 105 U.S. at 613 (internal quotation marks omitted).

**19-1303. STATEMENT OF OFFENSE CHARGED.** The offense charged in all informations shall be stated with the same fullness and precision in matters of substance as is required in indictments in like cases, and in all cases defendant or defendants shall have the same rights as to proceedings therein as he or they would have if prosecuted for the same offense upon indictment. Hence **Idaho Criminal Rules of Procedure 3, 4, and 10 were also violated.** Please note Idaho Criminal Rules are Identical to Federal Criminal Rules aside from Idaho completely abridges Rule 58 and the 6<sup>th</sup> Amendment.

Without an Information Idaho Statute **19-1302** is violated; Filing and endorsement of information. All informations shall be filed in the court having jurisdiction of the offense specified therein by the prosecuting attorney as informant to which he shall subscribe his name.

#### **Judicial Bias: (Fundamental Infirmity)**

Under Heyne v. Metro. Nashville Public Schools, 655 F.3d 556, 566 (6th Cir. 2011) when a person has a protected interest under the Due Process

1 Clause and the individual responsible for deciding whether to deprive that  
2 person of his interest is biased.”). Not only is a biased decision maker  
3 constitutionally unacceptable, but “our system of law has always  
4 endeavored to prevent even the probability of unfairness.” In re Murchison,  
5 supra at 349 U.S. 136; cf. Tumey v. Ohio, 273 U.S. 510, 273 U.S. 532  
6 (1927).

7

8 In State v. Womelsdorf , 47 Kan. App. 2d 307, 323, 274 P.3d 662 (2012),  
9 the court ruled that the lack of an impartial judge is a structural error. “To  
10 ensure that the opportunity is meaningful, there are aspects of due process  
11 that are irreducible minimums, including that whenever due process  
12 requires a hearing, the adjudicator must be impartial.” Today’s Fresh Start,  
13 Inc. v. L.A. County. Office. of Education., 303 P.3d 1140, 1149 (Cal.  
14 2013) (citing Caperton v. A.T. Massey Coal Co., 556 U.S. 868, 876  
15 (2009)).

16

17 **Right to be heard Denied: (Fundamental Infirmitiy)**

18 Parties whose rights are to be affected are entitled to be heard. Baldwin v.  
19 Hale, 68 U.S. (1 Wall.) 223, 233 (1863). Before a state may legitimately  
20 exercise control over persons and property, the state’s jurisdiction must be  
21 perfected by an appropriate service of process that is effective to notify all  
22 parties of proceedings that may affect their rights. But, whether the action  
23 be in rem or in personam, there is a constitutional minimum; due process  
24 requires notice reasonably calculated, under all the circumstances, to  
25 apprise interested parties of the pendency of the action and afford them an  
26 opportunity to present their objections. Mullane v. Central Hanover Bank  
27 & Trust Co., 339 U.S. 306, 314 (1950).

1 “The law of the land and the process of law are interchangeable terms and  
2 both import notice and an opportunity to be heard or defend in a regular  
3 proceeding before a competent tribunal.” Smith v. Keater et al, 286 N.C.  
4 530, 535, 206 S.E. 2d 203 206 (1974). “A sentence of a court, pronounced  
5 against a party without hearing him or giving him an opportunity to be  
6 heard, is not a judicial determination of his rights and is not entitled to  
7 respect in any other tribunal.” Windsor v. McVeigh, 93 U.S. 274 (1876).

8

9 **No Bail Hearing:** (Fundamental Infirmity) (Moot without an Information)

10 The purpose of a pretrial detention hearing is not to rehash probable cause  
11 but to provide opportunity for detainee to show no risk of flight or danger  
12 to community. United States v. Hurtado, 779 F.2d 1467, 1479 (11th Cir.  
13 1985).

14

15 **No Procedural Due Process:** (excess of jurisdiction)

16 Under Heyne v. Metro. Nashville Pub. Schs., 655 F.3d 556, 566 (6th Cir.  
17 2011) (Procedural due process is not satisfied when a person has a  
18 protected interest under the Due Process Clause and the individual  
19 responsible for deciding whether to deprive that person of his interest is  
20 biased.) (Armstrong v. Manzo, 380 U.S. 545, 552 (1965) (citation omitted).  
21 The mere fact that a hearing was held ... does not mean that a litigant was  
22 provided with the opportunity to be heard at a meaningful time and in a  
23 meaningful manner as required to satisfy due process.

24

25 And the “hallmarks of procedural due process” are “notice and a  
26 meaningful opportunity to be heard.” Austin v. Univ. of Or., 925 F.3d  
27 1133, 1139 (9th Cir. 2019) (citation omitted).

1 It's a longstanding principle that to deny an individual access to courts for  
2 the vindication of his or her rights is egregious.  
3

4 **Ineffective Assistance of Counsel:** (Fundamental Infirmity)

5 The assistance of counsel is a vital aspect of the defendants right to be  
6 heard, According to Powell is among the immutable principles of justice.  
7 Powell v. Alabama 287 U.S. 45 (1932).

8 The appropriate remedy for the underlying right to counsel violations was  
9 dismissal of the indictment with prejudice. United States, v. Morrison, 449,  
10 U.S., 361, 364–65 (1981).

12 **Denied right to Self-Representation:** (Fundamental Infirmity)

13 That right is based on the fundamental legal principle that a defendant must  
14 be allowed to make his own choices about the proper way to protect his  
15 own liberty. [Citation.] Because harm is irrelevant to the basis underlying  
16 the right, the Court has deemed a violation of that right structural error.  
17 People v. Lesser, D070195 (Cal. Ct. App. Aug. 31, 2017) (citing Weaver v.  
18 Massachusetts 137 S. Ct. 1899, 1908 (2017)). Denial of due process is the  
19 failure to observe that fundamental fairness essential to the very concept of  
20 justice. In order to declare a denial of it the Court must find that the  
21 absence of that fairness fatally infected the trial; the acts complained of  
22 must be of such quality as necessarily prevents a fair trial.

24  
25 For these errors, harm is irrelevant violation of the right may even aid a  
26 criminal defendant, such as appointing a lawyer in violation of the Sixth  
27 Amendment right of self-representation. Structural errors that can result in  
28 automatic reversal because the effects of the error are simply too hard to  
measure. Weaver v. Massachusetts, 137 S. Ct., 1899 (2017).

1 The court also held The Sixth Amendment does not provide merely that a  
2 defense shall be made for the accused; it grants to the accused personally  
3 the right to make his defense. It is the accused, not counsel, who must be  
4 informed of the nature and cause of the accusation. *Faretta v. California*  
5 422 U.S. 806 (1975).

6

7 **Chilled Speech:**

8 In *Mendocino Environmental Center v. Mendocino County*, the court  
9 pointed out that the proper First Amendment inquiry asks whether an  
10 official's acts would chill or silence a person of ordinary firmness from  
11 future First Amendment activities. 192 F.3d 1283, 1300 (9th Cir. 1999)  
12 (emphasis added).

13

14 **Subject Matter Jurisdiction never Acquired:**

15 Before a state may legitimately exercise control over persons and property,  
16 the state's jurisdiction must be perfected by an appropriate service of  
17 process that is effective to notify all parties of proceedings that may affect  
18 their rights. But, whether the action be in rem or in personam, there is a  
19 constitutional minimum; due process requires notice reasonably calculated,  
20 under all the circumstances, to apprise interested parties of the pendency of  
21 the action and afford them an opportunity to present their objections.  
22 *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950).

23

24 A trial court does not have the authority to act without subject-matter  
25 jurisdiction. Subject-matter jurisdiction is established via statute, rule, or  
26 constitutional provision. An order issued without subject-matter  
27 jurisdiction is void ab initio. *Ricci v. Ventures Trust 2013-I-H-R by MCM*  
28 *Capital Partners, LLC*, 276 So. 3d 5, 7-8 (Fla. 4th DCA 2019).

1 The doctrine that where a court has once acquired jurisdiction it has a right  
2 to decide every question which arises in the cause, and its judgment,  
3 however erroneous, cannot be collaterally assailed, is only correct when the  
4 court proceeds, after acquiring jurisdiction of the cause, according to the  
5 established modes governing the class to which the case belongs, and does  
6 not transcend, in the extent or character of its judgment, the law which  
7 is applicable to it. Windsor v. McVeigh, 93 U.S. 274 (1876).

8  
9 “Speaking generally, any acts which exceed the defined power of a court in  
10 any instance, whether that power be defined by constitutional provision,  
11 express statutory declaration, or rules developed by the courts and followed  
12 under the doctrine of stare decisis, are in excess of jurisdiction.” Pajaro  
13 Valley Water Management Agency v. McGrath (2005) 128 Cal.App.4th  
14 1093, 1101, 27 Cal.Rptr.3d 741.

15  
16 **Fraud on the Court:**

17 A “Fraud on the Court” occurs where it can be demonstrated, clearly and  
18 convincingly, that a party has sentiently set in motion some unconscionable  
19 scheme calculated to interfere with the judicial system's ability impartially  
20 to adjudicate a matter by improperly influencing the trier or unfairly  
21 hampering the presentation of the opposing party's claim or defense. Aoude  
22 v. Mobil Oil Corp., 892 F.2d 1115, 1118 (1st Cir. 1989). An abuse of  
23 discretion constitutes more than an error of judgment; rather, it implies that  
24 the trial court acted unreasonably, arbitrarily, or unconscionably.  
25 Blakemore v. Blakemore, 5 Ohio St.3d 217, 219 (1983); Belisle Constr. v.  
26 Perry 2022 Ohio 239 (Ohio Ct. App. 2022). Fraud Upon the Court is where  
27 the Judge (who is Not the Court) does Not support or uphold the Judicial  
28 Machinery of the Court.

1 The Court is an unbiased , but methodical creature which is governed by  
2 the Rule of law . . .that is, The Rules of Civil Procedure, Rules of Criminal  
3 Procedure and Rules of Evidence, all which is overseen by Constitutional  
4 Law. **The Court can ONLY be effective, fair, and “just” If it is allowed**  
5 to function as laws proscribe.

6

7 **Structural Errors:**

8 A void judgment, in turn, is one “affected by a fundamental infirmity,”  
9 which renders the judgment a “legal nullity.” United Student Aid Funds,  
10 Inc. v. Espinosa, 559 U.S. 260, 270 (2010). In Williams, the U.S. Supreme  
11 Court held that it is “structural error” when a judge with an  
12 “unconstitutional potential for bias” renders a judgment. 136 S. Ct. at 1905,  
13 1909.

14

15 It is inconceivable that a due process violation that is “structural error,” id.,  
16 would not also cause the case to be “affected by a fundamental infirmity,”  
17 Espinosa, 559 U.S. at 270. The court also relied on United Student Aid  
18 Funds, Inc. v. Espinosa, where the U.S. Supreme Court held that relief  
19 under Rule 60(b)(4) is available “only in the rare instance where a  
20 judgment is premised either on a certain type of jurisdictional error or on a  
21 violation of due process that deprives a party of notice or the opportunity to  
22 be heard.” 559 U.S. at 271. Speedy Trial Right Violated: The Court's  
23 opinion in Klopfer v. North Carolina, 386 U. S. 213 (1967), established  
24 that the right to a speedy trial is “fundamental,” and is imposed by the Due  
25 Process Clause of the Fourteenth Amendment on the States. Smith v.  
26 Hooey, 393 U. S. 374, 393 U. S. 378 (1969) (footnote omitted). The Court  
27 of Appeals went on to state: “The remedy for a violation of this  
28 constitutional right has traditionally been the dismissal of the indictment or  
the vacation of the sentence.”

1 The remedy of a second trial would not “neutralize the taint” of the original  
2 constitutional violation, and would therefore not be “appropriate in the  
3 circumstances.” Morrison, 449 U.S. at 365.

4

5 **Obstruction of Justice:**

6 Cent. Vt. Pub. Serv. Corp. v. Herbert, 341 F.3d 186, 190 (2d Cir. 2003)  
7 (holding that “a judgment may be declared void for want of jurisdiction  
8 when the court plainly usurped jurisdiction” (citations omitted)).  
9 Accordingly, “process crimes” comprise those criminal offenses with  
10 content addressing acts that interfere with the procedures and  
11 administration of justice. (Ante-Dating the Record) (**Exhibit D**)

12

13 **Comity is not applicable in this case** because “A void judgment is a  
14 nullity from the beginning, and is attended by none of the consequences of  
15 a valid judgment. It is entitled to no respect whatsoever because it does not  
16 affect, impair, or create legal rights.” Ex parte Seidel, 39 S.W.3d 221, 225  
17 (Tex. Crim. App. 2001), Ex parte Spaulding, 687 S.W.2d at 745 (Teague,  
18 J., concurring). Phelps v Alameida (9th Cir 2009) 569 F3d 1120 (**purpose  
19 of Rule 60(b) is to correct erroneous legal judgments that would  
20 prevent true merits of petitioner’s constitutional claims from ever  
21 being heard**).

22

23 It has also been held that “It is not necessary to take any steps to have a  
24 void judgment reversed, vacated, or set aside, It may be impeached in any  
25 action direct or, collateral.” Holder v. Scott, 396 S.W.2d 906,  
26 (Tex.Civ.App., Texarkana, 1965, writ ref., n.r.e.).

1 “A court cannot confer jurisdiction where none existed and cannot make a  
 2 void proceeding valid. It is clear and well established law that a void order  
 3 can be challenged in any court”, **Old Wayne Mutual L. Assoc. v.**  
 4 **McDonough**, 204 U.S. 8, 27 S. Ct. 236 (1907). The constitutional  
 5 requirement that full faith and credit be given in each state to the public  
 6 acts, records and judicial proceedings of every other state is necessarily to  
 7 be interpreted in connection with other provisions of the Constitution, and  
 8 therefore no state can obtain in the tribunals of other jurisdictions full faith  
 9 and credit for its judicial proceedings if they are wanting in the due process  
 10 of law enjoined by the fundamental law.

11  
 12 If the conclusiveness of a judgment or decree in a court of one state is  
 13 questioned in a court of another government, federal or state, it is open,  
 14 under proper averments, to inquire whether the court rendering the decree  
 15 or judgment had jurisdiction to render it. 204 U.S. at 9.

16  
 17 “No judgment of a court is due process of law, if rendered without  
 18 jurisdiction in the court, or without notice to the party.” Scott v. McNeal,  
 19 154 U.S. 34, 154 U.S. 46. “No state can, by any tribunal or representative,  
 20 render nugatory a provision of the supreme law.” 204 U.S. at 15. **Such is**  
 21 **the settled doctrine of the United States Supreme Court.**

22  
 23 In the leading case of Thompson v. Whitman, 18 Wall. 457, 85 U.S. 468,  
 24 the whole question was fully examined in the light of the authorities. Mr.  
 25 Justice Bradley, speaking for the Court and delivering its unanimous  
 26 judgment, stated the conclusion to be clear that the jurisdiction of a court  
 27 rendering judgment in one state may be questioned in a collateral  
 28 proceeding in another state, notwithstanding the averments in the record of  
 the judgment itself.

1 The Court, among other things, said that, if it be once conceded that “the  
2 validity of a judgment may be attacked collaterally by evidence showing  
3 that the court had no jurisdiction, it is not perceived how any allegation  
4 contained in the record itself, however strongly made, can affect the right  
5 so to question it.

6

7 **The very object of the evidence is to invalidate the paper as a record.**

8

9 If that can be successfully done, no statements contained therein have any  
10 force. If any such statements could be used to prevent inquiry, a slight form  
11 of words might always be adopted so as effectually to nullify the right of  
12 such inquiry.

13

14 Recitals of this kind must be regarded like asseverations of good faith in a  
15 deed, which avail nothing if the instrument is shown to be fraudulent.” 204  
16 U.S. at 16. In Williamson v. Berry, 8 How. 495, 49 U.S. 540, it was said to  
17 be well settled that the jurisdiction of any court exercising authority over a  
18 subject “may be inquired into in every other court when the proceedings in  
19 the former are relied upon and brought before the latter by a party claiming  
20 the benefit of such proceedings,” and that the rule prevails whether “the  
21 decree or judgment has been given in a court of admiralty, chancery,  
22 ecclesiastical court, or court of common law, or whether the point ruled has  
23 arisen under the laws of nations, the practice in chancery, or the municipal  
24 laws of states.”

25

26 In his Commentaries on the Constitution, Story, § 1313, referring to Mills  
27 v. Duryee, 7 Cranch 481, 11 U.S. 484, and to the constitutional requirement  
28 as to the faith and credit to be given to the records and judicial proceedings  
of a state, said:

1 “But this does not prevent an inquiry into the jurisdiction of the court in  
2 which the original judgment was given, to pronounce it, or the right of the  
3 state itself to exercise authority over the person or the subject matter.

4

5 **The Constitution did not mean to confer upon the states a new power**  
6 **or jurisdiction, but simply to regulate the effect of the acknowledged**  
7 **jurisdiction over persons and things within the territory.”** 204 U.S. at  
8 17.

9

10 It is with preponderance that Civil Rule 60(b) applies to any judgment,  
11 whether Criminal or Civil. Felker v. Turpin (Felker II), 101 F.3d 657, 661  
12 (11th Cir. 1996); Turner v. Godinez (N.D. Ill. Aug. 11, 2017).

13

14 Jurisdiction creates a presumption that the resulting judgment is legitimate  
15 and therefore binding, but that presumption can be rebutted under highly  
16 unusual circumstances, such as corruption, **monstrous abridgments of**  
17 **process**, outrageously incorrect results, or some combination.

18

19 In this sense, the party bearing the burden of persuasion bears the risk of  
20 non-persuasion. McNutt v. General Motors Acceptance Corp, 298 U.S.  
21 178, 189 (1936) (Because the plaintiff “is seeking relief ... it follows that he  
22 must carry throughout the litigation the burden of showing that he is  
23 properly in court.”)

24

25 “A judgment against a person on whom no process has been served is not  
26 erroneous and voidable, but, upon principles of natural justice and also  
27 under the due process clause of the Fourteenth Amendment, **is absolutely**  
28 **void.**” Simon v. Southern Ry. Co., 236 U.S. 115 (1915).

1 In re Brackett, 243 B.R. 910, 914 n 7 (Bankr. N.D. GA 2000) (“**If a**  
 2 **judgment is void, no proof is required that the defaulting party has a**  
 3 **meritorious defense or that the other party will not be prejudiced by**  
 4 **having the judgment set aside.”); See McCormick, 2 McCormick on  
 5 Evidence § 337 at 428 (cited in note 20) (stating that the burden of proof is  
 6 generally assigned to the party who “seeks to change the present state of  
 7 affairs”).**

8  
 9 **“A judgment is ‘void’ where a court ‘usurps a power without**  
 10 **jurisdiction.’”** Hoffler v. Bezio, 726 F.3d 144, 156 (2d Cir. 2013). Many  
 11 state courts have also echoed the traditional understanding, recognizing that  
 12 jurisdictional defects “Void” judgments. See, e.g., Commonwealth v.  
 13 Martin, 476 Mass. 72, 76 (Mass. 2016); Sanders v. Frakes, 295 Neb. 374,  
 14 380 (Neb. 2016); People v. Castleberry, 398 Ill. Dec. 22, 25 (Ill. 2015);  
 15 State v. Oerly, 446 S.W.3d 304, 307 (Mo. Ct. App. 2014); State v. Cramer,  
 16 192 Ariz. 150, 153–54 (Ariz Ct. App. 1998); Dike v. Dike, 75 Wash. 2d 1,  
 17 8 (Wash. 1968); Haynes v. Robbins, 158 Me. 17, 23–24 (Me. 1962).

18  
 19 **Selective enforcement** is the ability that executors of the law have to  
 20 arbitrarily select choice individuals as being outside of the law. The use of  
 21 enforcement discretion in an arbitrary way is referred to as selective  
 22 enforcement or selective prosecution. Selective enforcement is recognized  
 23 as sign of tyranny, and an abuse of power, because it violates rule of  
 24 law, allowing men to apply justice only when they chose.

25  
 26 Aside from this being inherently unjust, it almost inevitably must lead to  
 27 favoritism and **extortion**. See Willowbrook v. Olech, 528 U.S.  
 28 562; Levenstein v. Salafsky, 414 F. 3d 767; U.S. v. Armstrong, 116 S. Ct.  
 1480; Oyler v. Boles, 82 S. Ct. 501.

1 The remedy of a second trial would not “neutralize the taint” of the original  
2 constitutional violation, and would therefore not be “appropriate in the  
3 circumstances.” Morrison, 449 U.S. at 365.

4

5 **“The prosecutor is entitled to one, and only one, opportunity to require**  
6 **an accused to stand trial.”** Arizona v. Washington, 434 U.S. 497, 503–05  
7 (1978).

8

9 **“Denying defendants relief for clear violations of their procedural**  
10 **rights reduces the law to pretend-rules.”** United States v. Borello, 766  
11 F.2d 46, 58 (CA2 1985), quoting United States v. Antonelli Fireworks  
12 Co., 155 F.2d 631, 661 (CA2) (Frank, J., dissenting).

13

14 “In determining whether fraud constitutes fraud on the court, the relevant  
15 inquiry is not whether fraudulent conduct prejudiced the opposing party,  
16 but whether it harmed the integrity of the judicial process.” Estate of  
17 Stonehill, 660 F.3d at 444 (internal alterations omitted) (quoting Alexander  
18 v. Robertson , 882 F.2d 421, 424 (9th Cir. 1989)). Tampering with the  
19 administration of justice in the manner indisputably shown here involves  
20 far more than an injury to a single litigant. It is a wrong against the  
21 institutions set up to protect and safeguard the public, institutions in which  
22 fraud cannot complacently be tolerated consistently with the good order of  
23 society. Alexander v. Robertson , 882 F.2d 421, 424 (9th Cir. 1989).

24

25 See H.K. Porter Co. Inc. v. Goodyear Tire Rubber Co., 536 F.2d 1115,  
26 1119 (6th Cir. 1976) (dicta) (“Since attorneys are officers of the court, their  
27 conduct, if dishonest, would constitute fraud on the court.”)

1 The Supreme Court has held, for example, that if a trial court has  
2 “jurisdiction of the cause and of the party,” a defendant cannot be retried  
3 under double jeopardy due to a “voidable” error in the indictment. Benton  
4 v. Maryland, 395 U.S. 784, 797 (1969) (quotations omitted).

5  
6 **In this country the provisions in our Bills of Rights are limitations**  
7 **upon all departments of government.**

8  
9 “Sense of fairplay shocked is not due process.” (Congress Barred) Galvan  
10 v. Press, 347 U.S. 522, 74 S.Ct. 737.

11  
12 The prohibition against depriving the citizen or subject of his life, liberty,  
13 or property without due process of law is not new in the constitutional  
14 history of the English race.

15  
16 It is not new in the constitutional history of this country, and it was not new  
17 in the Constitution of the United States when it became a part of the  
18 Fourteenth Amendment, in the year 1866. Id at 96 U. S. 101; Davidson v.  
19 New Orleans, 96 U.S. 97 (1878).

20  
21 Prosecution by information was “an ancient proceeding at common law,  
22 which might include every case of an offense of less grade than a felony,  
23 except misprision of treason ... id at 538; Hurtado v. California, 110 U.S.  
24 516, 532 (1884).

25  
26 The words, “due process of law” were undoubtedly intended to convey the  
27 same meaning as the words “by the law of the land,” in Magna Charta.  
28 Lord Coke, in his commentary on those words (2 Inst. 50), says they mean  
due process of law.

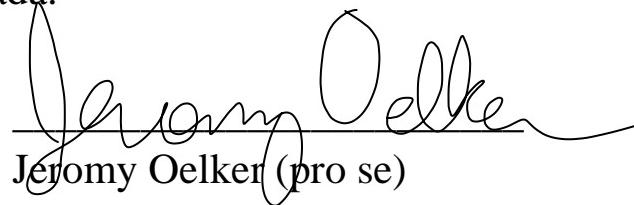
1 “The Union of these States is perpetual” under the Constitution. The United  
2 States do *not* form a compact, but are a “country” bound together by  
3 **national fabric.** Abraham Lincoln 1862. The union that Lincoln hoped  
4 to save was an agreement between the sovereign people of the United  
5 States, not the states themselves. And so, the president argued, the people  
6 of a particular state could not break away of their own volition.

7  
8 On May 29<sup>th</sup>, 2020 Lewis County Court was acting in “Bad Faith” and  
9 “Usurped” their authority/ “excess of jurisdiction”, intentionally,  
10 maliciously, in effect “Goading” me to move for a mistrial. It is very  
11 blatant they have no Honor towards our nations’ and the State of Idaho’s  
12 Covenant, “Due Process.”

13  
14 “It is well established that the deprivation of constitutional rights  
15 unquestionably constitutes irreparable injury.” Melendres v. Arpaio, 695  
16 F.3d 990, 1002 (9th Cir. 2012). Duty to Justice is a Slippery Slope.

17  
18 Please Vacate “Void” case CR31-20-0097. I declare under penalty of  
19 perjury that the foregoing is true and correct. Executed on this 29th day of  
20 January 2024 at Las Vegas, Nevada.

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Jeremy Oelker (pro se)

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